IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Tr.P(C).No. 90 of 2007()

OP.1173/2003 of FAMILY COURT, THIRUVALLA
.....

PETITIONER :

K.C. MARYKUTTY, PARANKIMAVILA VEEDU,
ARUMURIKKADA,KUNDARA P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.P.SIVARAJ

RESPONDENT:

LINEE THOMAS , KIZHAKKEPARAMBIL VEEDU,
KALLUNKAL MURI,NEDUMBARAM VILLAGE,THIRUVALLA.

BY ADV. SRI.MVS.NAMBOOTHIRY

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 1046 OF 2007
IN
TR.P.C. NO.90 OF 2007

DISMISSED

24/7/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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Tr.P.C. NO. 90 OF 2007

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Dated this the 24th day of July, 2007.

J U D G M E N T

This Transfer Petition is filed seeking to transfer O.P.1173/03 pending before the Family Court, Thiruvalla to the Family Court, Kollam. The petition is one for compensation filed by the husband against the wife and mother-in-law. Now, the transfer petitioner namely the power of attorney holder of the wife requests for a transfer on the ground of her ailment. The conduct of the parties are to be looked into while disposing of a transfer petition.

2. The Apex Court has also held that just because ladies are filing applications for transfer it need not be automatically granted and each case has to be considered on merits and transfer to be effected. The very same petitioner filed petition before the Court regarding the territorial jurisdiction of the Court and it came up to the High Court and

ultimately it was found that the Family Court, Thiruvalla has territorial jurisdiction to decide the issue. When such an attempt of ousting the jurisdiction of Thiruvalla Court failed, now the applicant has come up with a prayer to transfer the case on the grounds of ailment. The fact that the power of attorney holder is eagerly and factually prosecuting the case can be seen from the conduct and she has come before this Court even earlier with a writ petition. Now, it is true that there are some documents to show that she is having some ailment with her heart besides varicose veins. In a case for compensation it is always not necessary to have the presence of parties on each posting dates and somebody can be deputed to find out what has happened to the case. The real presence of the party becomes necessary when the matter is listed for trial and evidence is taken. Therefore, unlike in a matrimonial dispute which relates to divorce or restitution of conjugal rights whether the Family Court may insist for the presence of the party on each occasion to consider a viable method to compromise between the parties, such a course is not necessary in these types of

cases especially on the back drop that the matrimonial relationship has been dissolved by a decree of divorce and therefore it only assumes the characteristic of a money suit between two individuals. Therefore, since personal presence is not necessary on each occasion, on that ground there need not be a transfer.

3. Ultimately, if the Court directs for her appearance at the pre-trial stage and if she produces a medical certificate and requests for an adjournment or to excuse her absence certainly the Court will allow it and her imperative presence may be necessary only when she is being examined or she has to be present for giving instructions to cross-examine the petitioner in the case. In order to avoid hardship to the petitioner considering the factum of her ailment the Court can try to take the case in a day-to-day basis and dispose of the matter so that there will not be any difficulty for the parties. It is clear that she is in a position to come to Ernakulam from Kollam to file a writ petition. There will not be any difficulty for her to travel once or twice from Kollam to Thiruvalla which is connected by rail for conduct of the

case. I have also to say that it is not clear whether the exparte order passed against her is still there or not. It is also a matter for consideration while passing an order on the transfer petition. Therefore, I am not satisfied that there exists sufficient ground for transfer of the case and therefore the transfer application is dismissed.

But, I make it clear that the Court below shall, as far as possible, try to exempt her from personal appearance and also try to deal with the case on a day-today basis so that unnecessary hardship is avoided.

M.N. KRISHNAN, JUDGE.

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